

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LORENZO TUCKER, III,

Case No. 2:18-cv-00118-RFB-NJK

Plaintiff,

ORDER

V.

JODONA L. BROWN, *et al.*,

Defendants.

13 Plaintiff Lorenzo Tucker, III sues Defendants, seeking to proceed *in forma pauperis* and
14 asserting claims under 42 U.S.C. § 1983. ECF No. 1, 1-1. But a plaintiff may not seek relief under
15 42 U.S.C. § 1983 if a judgment in favor of the plaintiff “would necessarily imply the invalidity of
16 his conviction or sentence” Heck v. Humphrey, 512 U.S. 477, 487 (1994). Such claims “must be
17 dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been
18 invalidated.” Id.

In his Complaint, Plaintiff states the “relief sought” is two-fold: (1) dismissal of his sentence of supervised release and (2) expungement of his conviction from all records. ECF No. 1-1 at 1. He then asserts claims under 42 U.S.C. § 1983 to challenge his federal sentence and the subsequent revocation of his supervised release term in United States v. Tucker, No. 2:08-cr-00025-KJD-CWH (D. Nev. July 28, 2009) (sentencing); Tucker, No. 2:08-cr-00025-KJD-CWH (D. Nev. March 31, 2017) (supervised release revoked). Plaintiff previously appealed the Court’s order to revoke his term of supervised release, but the Ninth Circuit affirmed the Court’s order on December 21, 2018. Tucker, No. 2:08-cr-00025-KJD-CWH (D. Nev. December 21, 2018) (order of affirmance).

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1 The Court must dismiss Plaintiff's claims according to the precedent set forth in Heck v.
2 Humphrey. Plaintiff's claims seek to invalidate his sentence or the revocation of his supervised
3 release term, which was recently affirmed by the Ninth Circuit. Thus, he cannot demonstrate that
4 his underlying conviction or sentence has already been invalidated. His claims must be dismissed
5 as a result; 42 U.S.C. § 1983 does not provide an avenue for the relief requested until Plaintiff first
6 invalidates his conviction or sentence.

7 IT IS THEREFORE ORDERED that Plaintiff's Complaint is DISMISSED with prejudice.

8 IT IS FURTHER ORDERED that any appeal of this decision would not be taken in good
9 faith as Plaintiff's claims are clearly barred unless Plaintiff first invalidates his conviction or
10 sentence through the proper legal avenues.

11 IT IS FUTHER ORDERED that Plaintiff's Motion for Summary Judgment (ECF No. 6) is
12 DISMISSED as moot.

13 IT IS FUTHER ORDERED that the Report and Recommendation of Magistrate Judge Carl
14 W. Hoffman (ECF No. 11) is DISMISSED as moot.

15 IT IS FUTHER ORDERED that Plaintiff's Application for Leave to Proceed In Forma
16 Pauperis (ECF No. 12) is DISMISSED as moot.

17 IT IS FUTHER ORDERED that the Clerk of the Court is directed to enter judgment and
18 close this matter accordingly.

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20 **DATED:** February 14, 2019.

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RICHARD F. BOULWARE, II
24 **UNITED STATES DISTRICT JUDGE**
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